Supreme Court, U.S.
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No. ____

In The

Supreme Court of the United States

October Term, 1993

ODECO OIL & GAS COMPANY-DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.,

Petitioners,

versus

DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER LIFTING THE RESTRAINING ORDER TO PERMIT SUIT OUTSIDE THE LIMITATION ACTION IN A TRUE MULTIPLE CLAIM-INADEQUATE FUND SITUATION, CONSTITUTES JUDICIAL LEGISLATION BEYOND THE CONSTITUTIONAL AUTHORITY OF THE COURT AND RENDERS THE LIMITATION OF LIABILITY ACT MEANINGLESS

LIST OF PARTIES

The parties to the proceeding in the United States Court of Appeals for the Fifth Circuit were:

Odeco Oil & Gas Company-Drilling Division[1];

Odeco Drilling Services, Inc.[1];

David J. Bonnette;

Leslie G. Bonnette;

Juan Porras;

Henry Brumfield;

Ottis L. Robbins;

Cathy Ann Robbins;

Joel Thompson; and

Janet Franzine Thompson.

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[1] Odeco Oil & Gas Company-Drilling Division and Odeco Drilling Services, Inc. were, until February, 1992, wholly owned subsidiaries of Murphy Exploration & Production Company. On February 3, 1992, the assets of those companies were sold to Diamond M Corporation.

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PETITION FOR WRIT OF CERTIORARI

Odeco Oil & Gas-Drilling Division and Odeco Drilling Services, Inc., petitioners, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on October 14, 1993.

OPINIONS, JUDGMENTS AND ORDERS BELOW

The opinions below are contained in the appendices to the Petition. Appendix "A" is the decision of the Court

of Appeals for the Fifth Circuit rendered on October 14, 1993. Appendix "B" is the denial by the Court of Appeals for the Fifth Circuit of petitioners' Petition for Rehearing, which was entered on November 9, 1993. Appendix "C" is the opinion of the United States District Court for the Eastern District of Louisiana dated August 19, 1993. Appendix "D" is the final judgment of the United States District Court for the Eastern District of Louisiana, entered in accordance with F.R.C.P. 58 on September 3, 1992.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on October 14, 1993, and a Petition for Rehearing was denied on November 9, 1993. This Court has jurisdiction to review the decision of the Court of Appeals pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The following statutes, set forth in Appendix "E", are involved in this case: 46 U.S.C. §§ 183, 185, and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims.

STATEMENT OF THE CASE

On June 2, 1991, five Odeco employees were injured in an accident on a platform on the Outer Continental Shelf adjacent to the coast of Louisiana. More specifically, claimants were injured during a safety drill when the escape capsule which they entered freefell as it was being lowered to the water. On January 3, 1992, Odeco Oil & Gas-Drilling Division and Odeco Drilling Services, Inc. ("Odeco") filed an action for a Declaratory Judgment or alternatively, a Complaint for Exoneration from or Limitation of Liability in the United States District Court for the Eastern District of Louisiana. The district court thereafter and in accordance with the provisions of the Limitation of Liability Act entered an order on January 6, 1992 restraining any further litigation arising out of this casualty, and requiring that all claims be filed in the limitation proceeding by February 10, 1992. On the last day, the five injured employees filed answers to Odeco's pleadings and filed their respective claims in the limitation action. As part of their answers, claimants sought damages from Odeco for negligence under § 905(b) of the Longshore and Harbor Worker's Compensation Act and the general maritime law.

Two months later and almost five months after Odeco's pleadings were filed, four of the claimants, Brumfield, Bonnette, Thompson and Robbins, filed suit in the District Court of Cameron County, Texas, 103rd Judicial District. Named in the Texas suit as defendants were Shell Offshore, Inc., Shell Oil Company and Whittaker Corporation, Survival Systems Division and their co-worker, Porras; Porras in turn, filed a cross-claim against the defendants. All the claimants, Bonnette, Brumfield, Thompson, Robbins and Porras, subsequently filed a Motion to Dismiss Odeco's Declaratory Judgment action

in Louisiana on the grounds that their subsequent suit in Texas state court could fully litigate all issues raised by Odeco in their declaratory judgment action. In addition, claimants requested that the restraining order entered in the limitation action be lifted to permit the filing of suit against Odeco in the state court proceeding, and for a stay of the limitation action pending the outcome of the state court action. Claimants sought an order lifting the limitation stay despite the fact that the aggregate total of their claims far exceeded the limitation fund of $30,000.00.

Claimants' motions were ultimately granted by the district court on August 17, 1992 and written reasons were filed on August 19, 1992. A final judgment was entered in accordance with Federal Rule of Civil Procedure 58 on September 3, 1992. The United States Court of Appeals for the Fifth Circuit ultimately upheld the dismissal of Odeco's declaratory judgment action. The court vacated the order lifting the restraining order in the limitation proceeding and remanded the case for the district court to consider only the ramification of potential contribution or indemnity claims that might be asserted against Odeco by the defendants, Shell Offshore, Inc., Shell Oil Company, and Whittaker Corporation, in the pending Texas case, and therefore whether the stipulation entered among the claimants was sufficient. In its ruling, however, the Court of Appeals held that the district court must accede to the choice of fora of claimants if their stipulations fully protect Odeco's right to limit liability and agree to abide by an admiralty court's determination *de novo* of all facts and legal issues pertaining to Odeco's right to limit, notwithstanding the fact that the aggregate amount of claims exceeds the limitation fund. Odeco

submits that this decision is in conflict with the unequivocal mandate of the Limitation of Liability Act and the prior jurisprudence of this Court, leaving the Act vitiated.

REASONS FOR GRANTING CERTIORARI

I.

THE PANEL OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT HAS EXCEEDED ITS CONSTITUTIONAL AUTHORITY BY LIFTING THE RESTRAINING ORDER MANDATED BY THE LIMITATION OF LIABILITY ACT IN THIS MULTIPLE CLAIM-INADEQUATE FUND CASE

By refusing to uphold the mandatory stay provisions of the Limitation of Liability Act[2] as set forth in Section 185 of the Act and Rule F of the Supplemental Rules for Certain Admiralty and Maritime Claims, the United States Court of Appeals for the Fifth Circuit has engaged in the unconstitutional practice of judicial legislation. The terms of the Limitation Act are unequivocal. Once a vessel owner has either deposited a sum equal to the amount or value of the interest of such owner in the vessel and freight pending or transferred to a trustee its interest in the vessel and freight, Section 185 of the Limitation Act mandates that "all claims and proceedings against the owner with respect to the matter in question shall cease." The concursus proceeding established by Section 185 is defined further in Rule F(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims, which states:

> Upon compliance by the owner with the requirements of subdivision (1) of this Rule all

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[2] 46 U.S.C. § 181 *et seq.*, hereinafter referred to as the "Limitation Act."

> claims and proceedings against the owner or the owner's property with respect to the matter in question ***shall*** cease. On application of the plaintiff, the Court ***shall*** enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claims subject to limitation in the action *(emphasis added)*.

The statute and federal rule implementing it are specific in their terms. Section 185 and Rule F(3) use the word "shall", a legal term which mandates the stay of prosecution of other suits against the vessel owner. The Court is left with *no* discretion but to institute and maintain a stay order against other proceedings outside the limitation action.

The Courts are not free to administer the provisions of the Limitation Act too narrowly to the detriment of a shipowner. As noted by the United States Supreme Court in *Maryland Casualty Company v. Cushing*, 347 U.S. 409, 422, 74 S.Ct. 608, 615, 98 L.Ed. 806 (1954), if the limitation act "is administered with a tight and grudging hand, construing every clause most unfavorably against the shipowner, and allowing as little as possible to operate in its favor, the law will hardly be worth the trouble of its enactment." The concursus proceeding has been held to be one of the critical underlying purposes of the limitation action, designed to achieve a "complete and just disposition of a many-cornered controversy by providing a marshalling of assets and a distribution pro rata of an inadequate fund among claimants, none of whom can be paid in full." *In Re Ballard Shipping Co.*, 1991 AMC 727, 737 (D.RI 1990). Congress created no exceptions to the concursus at the time of its enactment. Moreover, despite

numerous judicial reservations about the Act, as well as recent amendments by Congress in 1984, Congress has not seen fit to repudiate the Act or the concursus. Until Congress repeals the Limitation Act or otherwise amends its provisions, the courts are constitutionally bound to apply it as written. *Hercules Carriers, Inc. v. Cla..nant State of Florida*, 768 F.2d 1558, 1565 (11th Cir. 1985).

The Court below has not applied the Act as written, and instead has engaged in judicial legislation by creating exceptions to the mandatory language of the statute heretofore not considered by Congress. It is one thing to create judicial exceptions not in conflict with the Act; that is to permit suit to proceed outside the limitation action where the fund exceeds the value of the aggregate total of the claims, or where there exists only a single claimant. In such situations, a marshalling of assets, and thus a concursus, is not needed. It is quite another to judicially emasculate the legislative purpose of the Act in a true multiple claimant-inadequate fund case. Congress has spoken on the issue, and the Courts should abide by the intent and will of Congress. This action by the Court below exceeds its constitutional authority.

II.

THE UNITED STATES SUPREME COURT HAS NEVER HELD THAT THE MANDATORY STAY OF ACTION SET FORTH IN THE LIMITATION ACT CAN BE LIFTED IN A TRUE MULTIPLE CLAIM-INADEQUATE FUND CASE

The Panel below has ruled that a federal court sitting in admiralty pursuant to the Limitation Act must accede

to the choice of fora of the claimant(s) to the limitation action if their choice "is accompanied by stipulations fully protecting [the owner's] right to limit liability and agreeing to abide by an admiralty court's determination of that right to limit." According to the panel, in such a situation the vessel owner does not confront a multiple claim-inadequate fund case. The Panel cites the United States Supreme Court decision in *Lake Tankers Corp. v. Henn*, 354 U.S. 147, 77 S.Ct. 1269, 1 L.Ed. 2d 1246 (1957) for this proposition. Odeco submits that the Panel below does not fully account for the factual scenario presented in the *Lake Tankers* case, which is clearly distinguishable from the instant action.[3]

The sole issue presented to the Supreme Court in *Lake Tankers* was whether a claimant may, in a multiple claimant-*adequate* fund situation, proceed with a state court action, subject to the continuing jurisdiction of the federal court to protect the petitioner's right to limited liability. It is within this limited context (i.e., an *adequate* fund) that the Supreme Court ruled that the injunction prohibiting suits outside the Limitation Act could be lifted.

The Supreme Court in *Lake Tankers*, however, distinguished cases involving multiple claimants and an inadequate fund. The Court emphasized throughout its decision that the Limitation Act is directed at misfortunes at sea where the losses incurred exceed the value of the vessel and pending freight. The Court also declared that

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[3] The same can be said for the decision rendered in *Langnes v. Green*, 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520 (1931), which dealt solely with a single claimant.

the concursus is the "heart" of the Limitation system and is a vital component of the Act where the claims **exceed** the value of the vessel and pending freight. Based on this analysis, the Court reached the following conclusion:

> **The language in one opinion to the effect that concursus is "the heart" of the limitation system therefore refers to those cases where the claims exceed the value of the vessel and pending freight. In that event, as we have pointed out, the concursus is vital to the protection of the offending owner's statutory right of limitation.** But this is not to say that where the concursus is not necessary to protection of the statutory right it is nonetheless required.
>
> We conclude that in the situation here [multiple claimant-adequate fund], a concursus beyond that required by the orders heretofore entered in this case is not necessary, and respondents may therefor proceed with their state court suit. *77 S.Ct. at 1273 (emphasis added).*

The only precedential value of the *Lake Tankers* decision is that claimants can proceed in state court, upon "proper" stipulation, when the aggregate value of all claims does not exceed the limitation fund. The Supreme Court in *Lake Tankers* does not hold, or even imply, that the restraining order may be modified to permit one or all of the claimants in a multiple claimant-inadequate fund case to proceed with suit outside the limitation action. This Court, in *Lake Tankers*, acknowledges that the concursus proceeding is the "heart" of the Limitation Act and is *vital* to the protection of the shipowner where the claims asserted in the limitation action exceed the value of the fund. Lower Courts should not be free to judicially

legislate this vital component out of the Act. This Court has not heretofore acquiesced in such conduct.

III.

THE DECISION RENDERED IN *PERSHING AUTO RENTALS, INC. V. GAFFNEY* REMAINS THE LAW AND SHOULD HAVE BEEN FOLLOWED IN THIS CASE

Odeco respectfully suggests that the Panel has misapplied established precedent by holding that claimants, upon proper stipulation, can proceed with a trial of their claims outside the limitation action in a true multiple claim-inadequate fund case. Contrary to the Panel's position, the Fifth Circuit's decision in *Pershing Auto Rentals, Inc. v. Gaffney*, 279 F.2d 546 (5th Cir. 1960) does not turn solely on the procedural defect that only two of four claimants entered into the purported protective stipulation. On the contrary, Judge Brown in the *Pershing Auto Rentals* case specifically held that although the court could reverse on that procedural basis alone, it felt compelled to address the merits of the overruling substantive question of whether the restraining order could ever be lifted or modified to permit suit outside a limitation action in a true multiple claimant-inadequate fund case. On this substantive question, the Fifth Circuit ruled in the negative.

The *Pershing Auto Rentals* decision remains the law today. Its holding is plain: an admiralty court entertaining a limitation action, when faced with a true multiple claim-inadequate fund case, as here, may not modify its restraining order to destroy the concursus and permit suits to proceed outside the limitation action. Notwithstanding the remand by the Panel with instructions for

the district court to consider whether the defendants to the state action in Texas should or must join in the stipulation before the restraining order can be lifted, its basic decision was in error in allowing all of the claimants in the multiple claim-inadequate fund scenario to stipulate out of the concursus proceeding. Such a decision leaves the Limitation Act totally vitiated. To do so exceeds the authority of the appellate court.

CONCLUSION

The terms of the Limitation Act are unequivocal. Once a vessel owner has either deposited a sum equal to the amount or value of the interest of such owner in the vessel and freight pending, or transferred to a trustee its interest in the vessel and pending freight, Section 185 of the Limitation Act, and Rule F(3) of the Supplemental Rules for Certain Admiralty and Maritime Claims mandate that "all claims and proceedings against the owner with respect to the matter in question shall cease." The statute and federal rule implementing it are specific in their terms. The Courts are left with *no* discretion but to institute and maintain the stay order against other proceedings outside the Limitation Action where the value of the claims exceeds the value of the limitation fund. Congress has created no exceptions to the concursus where true multiple claims exceed the limitation fund, in spite of numerous amendments to the Act. Until Congress repeals the Limitation Act or otherwise amends its provisions, the Courts are constitutionally bound to apply it as written.

The Court below has not applied the Act as written and, instead, has engaged in judicial legislation by creating exceptions to the mandatory language of the statute heretofore not considered by Congress or this Court. This action by the Court below exceeds its constitutional authority and this Court's prior decisions. Accordingly, this Court should grant certiorari.

Respectfully submitted,

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APPENDIX A

ODECO OIL AND GAS COMPANY, DRILLING DIVISION and Odeco Drilling Services, Inc., Plaintiffs-Appellants,

v.

David J. BONNETTE, et al., Defendants-Appellees.

No. 92-3776.

United States Court of Appeals,

Fifth Circuit.

Oct. 14, 1993.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before JOHNSON, JOLLY, and JONES, Circuit Judges.

EDITH H. JONES, Circuit Judge:

Odeco Oil & Gas Company and Odeco Drilling Services, Inc. (Odeco) appeal the dismissal of their declaratory judgment action and the lifting of the stay in a limitation of liability proceeding. Upon review, we find that the district court did not abuse its discretion in dismissing the declaratory judgment, but it must reconsider one facet of the lifting of the stay.

I.

On June 2, 1991, Odeco was conducting safety drills on a fixed platform in the Gulf of Mexico off the coast of

Louisiana. Five members of the platform's crew, David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis L. Robbins, and Joe Thompson (the Crew), boarded an escape capsule suspended 90 feet above the Gulf. Someone in the capsule pulled the wrong lever, releasing the capsule from the cable that supported it, and the capsule and its passengers plunged 90 feet into the ocean, severely injuring all of them. Odeco immediately began paying workers' compensation under the Longshore and Harbor Worker's Compensation Act (LHWCA).

Fearing the possibility of multiple vessel negligence claims under section 905(b) of the LHWCA,[1] Odeco filed a declaratory judgment action on January 3, 1992 requesting that the court determine:

(1) that the escape capsule is not a vessel under section 905(b) of the LHWCA;

(2) that the injuries were not caused by vessel negligence; and

(3) that any action for damages is barred by section 905(a) of the LHWCA.

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[1] Such claims are in certain instances permissible against the employer qua vessel, even when the employer has paid workers' compensation under the LHWCA. *See Smith v. M/V Captain Fred*, 546 F.2d 119, 122-23 (5th Cir.1977). We do not, however, decide the difficult questions posed by this case, such as whether the escape pod was a § 905(b) "vessel" or whether there was "vessel negligence".

Alternatively, Odeco sought to limit its liability to $30,000, the alleged value of the capsule, pursuant to the Limitation of Liability Act, 46 U.S.C. App. § 183 *et seq.*[2]

On January 6, 1992, the district court issued an order staying any further litigation against Odeco arising out of the accident until the determination of the limitation of liability proceeding. The order further required the injured employees to file all of their claims against Odeco in the limitation proceeding.

Four of the injured men, Brumfield, Bonnette, Thompson, and Robbins, then filed a personal injury suit in Cameron County, Texas on April 29, 1992 naming Shell

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[2] Both the declaratory judgment action and the limitation proceeding were based on admiralty jurisdiction. The district court did not examine the basis of its subject matter jurisdiction, but this court must do so when it appears at all questionable. *See Giannakos v. M/V Bravo Trader*, 762 F.2d 1295, 1297 (5th Cir.1985) ("United States District Courts and Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction sua sponte if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking."). Despite troubling language in *Sisson v. Ruby*, 497 U.S. 358, 364-65, 110 S.Ct. 2892, 2897, 111 L.Ed.2d 292 (1990) (requiring courts to "focus on the general character of the activity" when determining whether a substantial relationship exists between the activity giving rise to the incident and traditional maritime activity), and *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 255-56, 93 S.Ct. 493, 498, 34 L.Ed.2d 454 (1972) (offering hypothetical situations factually similar to this case that might not satisfy the "significant relationship" test), we think the nature of the man-overboard drill at issue in this case is sufficiently salty to sustain admiralty jurisdiction, at least for purposes of the preliminary matters decided by the district court.

Offshore, Inc., Shell Oil Company, Whittaker Corporation, and Juan M. Porras as defendants.[3] Porras, in turn, filed cross-claims against the other defendants.[4] Porras and the four plaintiffs in the Texas court filed a motion in the federal district court seeking to dismiss Odeco's declaratory judgment action and to lift the stay preventing litigation against Odeco. The district court granted that motion, dismissing the declaratory judgment action and lifting the limitation stay to allow the Crew to litigate their claims against Odeco in the forum of their choice before returning to the district court for the limitation of liability proceeding within its exclusive jurisdiction.

II.

The Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.* (1988), provides that a court "may declare the rights and other legal relations of any interested party seeking such declaration." *Id.* at § 2201. It is well established in this circuit that a court need not provide declaratory judgment relief on request, as this is a matter left to the district court's sound discretion. *See, e.g., Rowan Companies, Inc. v. Griffin*, 876 F.2d 26, 28 (5th Cir.1989) (citing cases); *Mission Ins. Co. v. Puritan Fashions Corp.*, 706 F.2d 599, 601 (5th Cir.1983) (same). Although a court may not dismiss an action for declaratory relief "on the basis of whim," *Hollis v. Itawamba County Loans*, 657 F.2d 746, 750 (5th Cir.1981), or without providing a written or oral

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[3] Because of the automatic stay in the limitation proceedings, Odeco was not a named defendant.

[4] This suit was removed to federal district court, where a motion to remand is pending.

explanation, *See Rowan*, 876 F.2d at 29-30, the court may consider a variety of factors in determining whether to decide a declaratory judgment suit. *See Torch, Inc. v. LeBlanc*, 947 F.2d 193, 195 (5th Cir.1991); *Rowan*, 876 F.2d at 29.

In this case the district court found that the Texas court provided an adequate forum initially to decide the vessel status of the capsule.[5] The court further found that Odeco's declaratory judgment action was filed for the purpose of forum shopping in anticipation of other suits to be filed by the Crew. Finally, the court found that the Texas forum would not cause undue inconvenience to Odeco, which it does business in Texas, notwithstanding the probability that the Texas court might not apply the same doctrine of *forum non conveniens* as a federal court. Under the circumstances, these findings are not clearly erroneous, and, although this court might have exercised its discretion differently, the district court did not *abuse* its discretion. *See Magnolia Marine Transport v. LaPlace Towing Corp.*, 964 F.2d 1571, 1580-82 (5th Cir.1992).

III.

Nearly four decades ago, the Supreme Court recognized two situations in which a limitation of liability proceeding may be stayed to accommodate a claimant's

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[5] We agree with Odeco that the legal viability of the crew's § 905(b) claim raises serious and novel issues of maritime law at the threshold to recovery by appellees. While the state court is undoubtedly competent to determine these issues, some of them may not finally be resolved under the parties' stipulation until the federal court considers Odeco's limitation case.

right to pursue common law remedies under the "saving to suitors" clause.[6] *See Lake Tankers Corp. v. Henn*, 354 U.S. 147, 151-53, 77 S.Ct. 1269, 1271-73, 1 L.Ed.2d 1246 (1957). Bradley stated, claims may proceed outside the limitation action (1) if they total less than the value of the vessel, or (2) if the claimants stipulate that the federal court has exclusive jurisdiction over the limitation of liability proceeding and that they will not seek to enforce a greater damage award until the limitation action has been heard by the federal court. *See Magnolia Marine Transport*, 964 F.2d at 1575-76; *In re Two "R" Drilling Co.*, 943 F.2d 576, 577-78 (5th Cir.1991); *In re Dammers & Vanderheide & Scheepvaart Maats Christina B.V.*, 836 F.2d 750, 755-60 (2d Cir.1988). Accommodating the goals of both the Limitation of Liability Act and the "saving to suitors" clause of 28 U.S.C. § 1333 has caused some tensions. *See Magnolia Marine Transport*, 964 F.2d at 1575 (citing *In re Dammers & Vanderheide*, 836 F.2d at 754).

Odeco contends that this is a multiple claimant-inadequate fund case that requires the limitation proceeding to take precedence over the state court suit. This contention is only partly true. If we assume that each of the crew claimants' damage claims must be aggregated and totted up against the limitation fund, notwithstanding their agreements that, if necessary, they will not enforce

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[6] The "savings to suitors" clause is found in 28 U.S.C. § 1333 (1988) and provides in relevant part:

> The district courts shall have original jurisdiction, exclusive of the courts of the states, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

judgments against appellants for more than the limitation fund, then the fund is by definition inadequate. If the purpose of the Limitation Act were to accomplish judicial efficiency as well as limitation of liability, this case would clearly call for concursus proceeding. But the Supreme Court explained in *Lake Tankers*, 354 U.S. at 152-53, 77 S.Ct. at 1272-73 that liability may and should be limited consistent with preserving the claimants' right to proceed in the fora of their choice. So where, as here, all of the claimants are so anxious to take advantage of the perceived magnanimity of South Texas juries that they are willing to stipulate essentially that they will submit to two trials – the state court trial followed by a substantially redundant federal limitation proceeding – this court is hard put to deny them. We must accede to this choice *if* it is accompanied by stipulations fully protecting Odeco's right to limit liability and agreeing to abide by an admiralty court determination of the right to limit. Couched in these terms, Odeco does not confront a multiple claim-inadequate fund lawsuit.[7]

Two other sources of claimants have been mentioned. The wives of the Crew joined in the Texas lawsuit but have not appeared or attempted to file claims in the limitation proceeding. Odeco concedes that case law

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[7] If the claimants' stipulation here covers *all* possible claimants and assures Odeco would never have to pay more than the limitation fund if the admiralty court so determines, this case is instantly distinguishable from *Pershing Auto Rentals v. Gaffney*, 279 F.2d 546 (5th Cir.1960). In that case, written shortly after *Lake Tankers*, only two out of four claimants offered to execute protective stipulations. *See id.* at 548-49. The sum of the multiple claims still far exceeded the limitation fund. *See id.*

authorizes those whose claims are derivative of the injured workers to proceed in state court upon proper stipulation without risking a multiple claim-inadequate fund situation. *See Magnolia Marine*, 964 F.2d at 1574, 1579-80; *In re Two "R" Drilling*, 943 F.2d at 577-78. The Crew judicially admitted that their stipulation should have included their spouses' rights, and we amend the stipulation for that purpose.

Of more concern is the allusion to potential claims for contribution or indemnity against Odeco by other defendants sued by the Crew in Texas court. Those companies have not yet appeared in the limitation proceeding; consequently, they are not parties to the stipulation. Because their claims, if preserved and matured, could cause a multiple claimant-inadequate fund situation to arise, we must vacate the district court's stay of the limitation case so that it can consider the implications of codefendant cross-claims.

Apart from the possible codefendant claims, the stipulations agreed to by the parties contain standard terms and adequately protect Odeco's interests. For additional clarification, we note that the Crew, through their lawyers, agreed that the stipulations apply whether their case is litigated in Texas state or federal court. The stipulations also preserve Odeco's right to litigate *all* issues pertaining to limitation in the limitation court free of any claims of *res judicata*.

CONCLUSION

The district court did not abuse its discretion in dismissing Odeco's declaratory judgment action. However, we vacate and remand the stay of the limitation proceeding for the district court to consider the ramifications of contribution or indemnity claims that might be asserted against Odeco by virtue of the pending Texas case.

AFFIRMED in part, VACATED and REMANDED in part.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3776

ODECO OIL & GAS COMPANY,
DRILLING DIVISION AND ODECO
DRILLING SERVICES, INC.,

Plaintiffs-Appellants,

versus

DAVID J. BONNETTE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the
Eastern District of Louisiana

ON PETITIONS FOR REHEARING AND SUGGESTIONS
FOR REHEARING EN BANC

(Opinion 10/14/93, 5 Cir., ___, ___ F.2d ___)

(Filed November 09, 1993)

Before JOHNSON, JOLLY, and JONES, Circuit Judges.

PER CURIAM:

(X) The Petitions for Rehearing are DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled

on rehearing en banc, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestions for Rehearing En Banc are DENIED.

( ) The Petitions for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Federal Rules of Appellate Procedure and Local Rule 35) the Suggestions for Rehearing En Banc are also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Edith H. Jones
United States Circuit Judge

APPENDIX C

MINUTE ENTRY
WICKER, J.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY – DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	CIVIL ACTION NUMBER 92-0023 SECTION "L"(6)
VERSUS	
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	
**********	(Filed Aug. 18, 1992)
IN THE MATTER OF: ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	(DATE OF ENTRY AUG. 19, 1992)

This is a declaratory judgment action and a limitation of liability proceeding filed by ODECO Oil & Gas Company – Drilling Division and ODECO Drilling Services, Inc. (ODECO).

On June 2, 1991, ODECO conducted safety drills on a Shell Offshore, Inc. platform located off the Louisiana coast in South Timbalier, Block 295-A. During the "man-

overboard" exercise, the defendants, David J. Bonnette, Juan M. Porras, Henry Brumfield, Ottis Robbins and Joel Thompson, all ODECO employees, boarded an emergency escape capsule manufactured by Whittaker Corporation (Whittaker). While they were aboard the capsule fell approximately ninety (90) feet, causing the defendants to incur various injuries. As a result, ODECO began payments to the defendants pursuant to the Longshore and Harbor Workers' Compensation Act (LHWCA), 33 U.S.C. § 901 et seq.

On January 3, 1992, ODECO filed a declaratory judgment action asking this Court to declare:

(1) That the escape capsule is not a vessel under § 905(b) of the LHWCA;

(2) That the injuries were not caused by vessel negligence pursuant to § 905(b); and

(3) That any action for damages is barred by § 905(a) of the Act.

In the alternative, should the Court determine the capsule was a vessel, ODECO sought to limit its liability to $30,000, the alleged value of the capsule, pursuant to the Limitation of Liability Act, 46 U.S.C. § 181 et seq.

Subsequent to the filing of this action, on April 27, 1992 the named defendants (except for Porras) filed an action in the 103rd Judicial District Court, Brownsville, Cameron County, Texas, for injuries they allegedly suffered while aboard the escape capsule during the "man overboard" drill. Named as defendants were Shell Oil Company, Shell Offshore (Shell), Whittaker and Juan Porras. Because of the automatic stay in the limitation proceedings, ODECO was not a named defendant.

Now before the Court is defendants' motion to dismiss the declaratory relief action and to lift the stay in the limitation proceedings to permit them to go forward with their state lawsuit. After considering the briefs and exhibits of counsel, the record, the applicable law, and the stipulations entered into by the defendants, the Court GRANTS the defendants' motion to dismiss the declaratory judgment action, to lift the restraining order in the limitation proceeding, and to administratively stay the limitation action.

In this motion, defendants contend that the Court should decline to exercise its discretion to hear the declaratory judgment since the subsequently-filed state court action can resolve the entire controversy. They also contend that the stay should be lifted since they have entered into adequate stipulations that allow this Court to retain jurisdiction to hear the limitation action after the state court proceedings are resolved. Finally, they assert the limitation proceeding should be administratively stayed since the state court matter may resolve the issues without the necessity of proceeding in federal court.

The Declaratory Judgment Action

Declaratory relief is a matter of district court discretion. *Mission Insurance Co. v. Puritan Fashions Corp.*, 706 F.2d 599, 601 (5th Cir. 1983). In determining whether to decide a declaratory judgment action, the court may consider a variety of factors. As stated by the Fifth Circuit in *Rowan Companies, Inc. v. Griffin*, 876 F.2d 26, 29 (5th Cir. 1989), declaratory judgment relief may be denied [i] because of a pending state court proceeding in which the

matters in controversy between the parties may be fully litigated, [ii] because the declaratory complaint was filed in anticipation of another suit and is being used for the purpose of forum shopping, [iii] because of possible inequities in permitting the plaintiff to gain precedence in time and forum or [iv] because of inconvenience to the parties or the witnesses. None of the factors take precedence over the other and the Court has the discretion to consider as many of the variables as it wishes. *Torch, Inc. v. LeBlanc,* 947 F.2d 193, 195 (5th Cir. 1991).

Whether or not the escape capsule is a vessel can be adequately addressed in the state court suit. The Texas court must decide the vessel status of the capsule to render judgment. There is no need for this Court to hear this declaratory judgment action when the issue will be fully litigated in the Texas state court.

As to the second factor, it is clear that ODECO filed this declaratory judgment action in anticipation of a suit being filed by the defendants. It so stated in paragraph 14 of its complaint. By filing the limitation proceeding with the declaratory judgment action, ODECO secured a federal forum, preventing defendants from naming it as a party defendant in the state court suit because the stay prohibited them from filing any action against ODECO as owner of the escape capsule. ODECO clearly sought to prevent the defendants from suing it in state court.

The defendants have chosen to adjudicate their claims in the state court. "The issues of a shipowner's limitation of liability are issues only for the admiralty court, but it is well recognized that a claimant may pursue the claim before a jury in state court for resolution of

those issues beyond the exclusive jurisdiction of the admiralty court." *In Re Two R Drilling Co., Inc.*, 943 F.2d 576, 578 (5th Cir. 1991).

ODECO contends that the Eastern District of Louisiana is the preferable forum because (1) Porras is the only defendant residing in Texas; (2) ODECO and Shell have offices in New Orleans; and (3) many of the defendants' treating physicians are located in New Orleans; and (4) the Texas state court may not apply the doctrine of *forum non conveniens*.

This argument is without merit. Both ODECO and Shell conduct business in Texas, making them amenable to suit there. Although the Texas state court might not apply the same doctrine of *forum non conveniens* as a federal court, that possibility does not change the Court's decision to decline to hear this declaratory judgment action. *See Aquafaith Shipping, Ltd. v. Jarillas*, 963 F.2d 806, 809 (5th Cir. 1992).

The Alternative Limitation of Liability Action

To buttress their motion to lift the stay in the limitation action, which prohibits them from filing claims against ODECO, the movers have entered into five stipulations which adequately protect ODECO's interest and preserve this Court's exclusive jurisdiction to hear the limitation proceeding. Movers stipulate that:

(1) They shall bring all possible claims and causes of actions against ODECO in the *same* court;

(2) They recognize ODECO's right to bring a limitation action in this Court, but reserve

the right to contest the allegations made by ODECO in their limitation complaint;

(3) They will not seek in the Texas state court action any judgment regarding ODECO's right to its limitation of liability and waive any claim of *res judicata* as to the issue of limitation of liability based on the state court judgment;

(4) Although they may not agree with the stated value of the capsule, $30,000, in the event that there is a state court judgment in excess of that amount, they will not seek to enforce the excess pending the adjudication of the limitation proceeding; and

(5) They agree that if ODECO is cast in judgment for attorneys' fees and costs, then that judgment will have priority over their claims.

These stipulations recognize this Court's exclusive jurisdiction to determine all issues relating to the limitation proceeding and to limit the amount of the judgment to the value of the limitation fund. *In Re Two R Drilling Co., Inc., supra; Magnolia Marine Transport v. LaPlace Towing Corp.*, 964 F.2d 1571 (5th Cir. 1992).

However, in this case there are multiple claimants. "But even in multiple-claimant cases, admiralty courts still should allow state court claims to proceed under proper stipulations. Multiple claimants may reduce their claims to the equivalent of a single claim by agreeing and stipulating as to the priority in which the claimants will receive satisfaction against the shipowner from the limited fund." *Magnolia Marine Transport v. LaPlace Towing Corp., supra.* Although the defendants herein have not

entered into a stipulation similar to that of the two state court claimants in *Magnolia*, the other stipulations entered into by the defendants adequately protect ODECO's interest. Specifically, the defendants have stipulated that their claims will be adjudicated in one forum, *i.e.*, the Texas state court, so there will not be multiple judgments filed against ODECO.

ODECO further contends the stay should not be lifted on the grounds that the Texas state court suit has been removed by Shell and Whittaker to the United States District Court for the Southern District of Texas, Brownsville Division. The Court has learned that a motion to remand on the basis of fraudulent joinder is pending. The fact that the state court suit has been moved to the federal court does not divest this Court of the power to lift the stay in the limitation action before it. Once the stay is lifted, the defendants can add ODECO to their action for damages, whether it be in federal or state court.

Accordingly, the Court GRANTS the motion to dismiss ODECO's declaratory judgment action, retaining the limitation of liability action filed in the alternative by ODECO. It is further ordered that the motion to lift the restraining order staying the filing of claims against ODECO is GRANTED.

Further, the Court GRANTS the motion to administratively stay the limitation proceeding, pending resolution of defendants' action for tort damages, reserving to the parties the right to file a motion to reopen the matter as required.

New Orleans, Louisiana, this 17th day of August, 1992.

/s/ Veronica D. Wicker
VERONICA D. WICKER
UNITED STATES
DISTRICT COURT

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

ODECO OIL & GAS COMPANY – DRILLING DIVISION AND ODECO DRILLING SERVICES, INC.	*	CIVIL ACTION NO. 92-0023 SECTION "L"
v.	*	MAGISTRATE (6)
DAVID J. BONNETTE, JUAN M. PORRAS, HENRY BRUMFIELD, OTTIS L. ROBBINS AND JOEL THOMPSON	*	
* * *	*	
IN THE MATTER OF:	*	
ODECO DRILLING SERVICES, INC., AS OWNER, AND ODECO OIL & GAS COMPANY – DRILLING DIVISION, AS OWNER PRO HAC VICE OF THE ESCAPE CAPSULE WHITTAKER CAPSULE NO. 1, IN A CAUSE OF ACTION FOR EXONERATION FROM OR LIMITATION OF LIABILITY	*	

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JUDGMENT
(Filed Sept. 2, 1992)
(DATE OF ENTRY SEP. 3, 1992)

In accordance with the written reasons set forth in the Minute Entry entered in this matter on August 19, 1992,

IT IS ORDERED, ADJUDGED AND DECREED that the Declaratory Judgment Action filed by plaintiffs be and is hereby dismissed;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants' Motion to Lift the Restraining Order in the limitation of liability action filed in the alternative by plaintiffs is hereby granted subject to the following stipulations:

(1) Defendants shall bring all possible claims and causes of action against plaintiffs in the *same* court;

(2) Defendants recognize plaintiffs' right to bring a limitation action in this Court, but reserve the right to contest the allegations made by plaintiffs in their limitation complaint;

(3) Defendants will not seek in the Texas action any judgment regarding plaintiffs' right to their limitation of liability and waive any claim of *res judicata* as to the issue of limitation of liability based on the Texas Court judgment;

(4) Although defendants do not agree with the stated value of the capsule, $30,000.00, in the event there is a judgment in excess of that amount, defendants will not seek to enforce the excess pending the adjudication of the limitation proceeding; and

(5) Defendants agree that if plaintiffs are cast in judgment for attorney's fees and costs, then that judgment will have priority over their claims.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the limitation of liability action filed in the alternative by plaintiffs be and is hereby stayed pending resolution of defendants' action for tort damages, reserving to the parties the right to file a motion to reopen the matter as required.

New Orleans, Louisiana this 2nd day of September, 1992.

/s/ Veronica D. Wicker
VERONICA D. WICKER,
JUDGE

APPENDIX E

46 U.S.C.

§ 183. Amount of liability; loss of life or bodily injury; privity imputed to owner; "seagoing vessel"

(a) The liability of the owner of any vessel, whether American or foreign, for any embezzlement, loss, or destruction by any person of any property, goods, or merchandise shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall not, except in the cases provided for in subsection (b) of this section, exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

(b) In the case of any seagoing vessel, if the amount of the owner's liability as limited under subsection (a) of this section is insufficient to pay all losses in full, and the portion of such amount applicable to the payment of losses in respect of loss of life or bodily injury is less than $420 per ton of such vessel's tonnage, such portion shall be increased to an amount equal to $420 per ton, to be available only for the payment of losses in respect of loss of life or bodily injury. If such portion so increased is insufficient to pay such losses in full, they shall be paid therefrom in proportion to their respective amounts.

(c) For the purposes of this section the tonnage of a seagoing steam or motor vessel shall be her gross tonnage without deduction on account of engine room, and the

tonnage of a seagoing sailing vessel shall be her registered tonnage; *Provided*, That there shall not be included in such tonnage any space occupied by seamen or apprentices and appropriated to their use.

(d) The owner of any such seagoing vessel shall be liable in respect of loss of life or bodily injury arising on distinct occasions to the same extent as if no other loss of life or bodily injury had arisen.

(e) In respect of loss of life or bodily injury the privity or knowledge of the master of a seagoing vessel or of the superintendent or managing agent of the owner thereof, at or prior to the commencement of each voyage, shall be deemed conclusively the privity or knowledge of the owner of such vessel.

(f) As used in subsections (b), (c), (d), and (e) of this section and in section 183b of this title, the term "seagoing vessel" shall not include pleasure yachts, tugs, towboats, towing vessels, tank vessels, fishing vessels or their tenders, self-propelled lighters, nondescript self-propelled vessels, canal boats, scows, car floats, barges, lighters, or nondescript non-self-propelled vessels, even though the same may be seagoing vessels within the meaning of such term as used in section 188 of this title. R.S. § 4283; Aug. 29, 1935, c. 804, § 1, 49 Stat. 960; June 5, 1936, c. 521, § 1, 49 Stat. 1479.

46 U.S.C.

§ 185. Petition for limitation of liability; deposit of value of interest in court; transfer of interest to trustee

The vessel owner, within six months after a claimant shall have given to or filed with such owner written notice of claim, may petition a district court of the United States of competent jurisdiction for limitation of liability within the provisions of this chapter and the owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the interest of such owner in the vessel and freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title, or (b) at his option shall transfer, for the benefit of claimants, to a trustee to be appointed by the court his interest in the vessel and freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of section 183 of this title. Upon compliance with the requirements of this section all claims and proceedings against the owner with respect to the matter in question shall cease. R.S. § 4285; June 5, 1936, c. 521, § 3, 49 Stat. 1480.

Federal Rules of Civil Procedure

Rule F. Limitation of Liability.

(1) TIME FOR FILING COMPLAINT: SECURITY. Not later than six months after receipt of a claim in writing, any vessel owner may file a complaint in the appropriate district court, as provided in subdivision (9) of this rule, for limitation of liability pursuant to statute. The owner (a) shall deposit with the court, for the benefit of claimants, a sum equal to the amount or value of the owner's interest in the vessel and pending freight, or approved security therefor, and in addition such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended; or (b) at the owner's option shall transfer to a trustee to be appointed by the court, for the benefit of claimants, the owner's interest in the vessel and pending freight, together with such sums, or approved security therefor, as the court may from time to time fix as necessary to carry out the provisions of the statutes as amended. The plaintiff shall also give security for costs and, if the plaintiff elects to give security, for interest at the rate of 6 per cent per annum from the date of the security.

(2) COMPLAINT. The complaint shall set forth the facts on the basis of which the right to limit liability is asserted, and all facts necessary to enable the court to determine the amount to which the owner's liability shall be limited. The complaint may demand exoneration from as well as limitation of liability. It shall state the voyage, if any, on which the demands sought to be limited arose, with the date and place of its termination; the amount of

all demands including all unsatisfied liens or claims of lien, in contract or in tort or otherwise, arising on that voyage, so far as known to the plaintiff, and what actions and proceedings, if any, are pending thereon; whether the vessel was damaged, lost, or abandoned, and, if so, when and where; the value of the vessel at the close of the voyage or, in case of wreck, the value of her wreckage, strippings, or proceeds, if any, and where and in whose possession they are; and the amount of any pending freight recovered or recoverable. If the plaintiff elects to transfer the plaintiff's interest in the vessel to a trustee, the complaint must further show any prior paramount liens thereon, and what voyages or trips, if any, she has made since the voyage or trip on which the claims sought to be limited arose, and any existing liens arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; and whether the vessel sustained any injury upon or by reason of such subsequent voyage or trip.

(3) CLAIMS AGAINST OWNER; INJUNCTION. Upon compliance by the owner with the requirements of subdivision (1) of this rule all claims and proceedings against the owner or the owner's property with respect to the matter in question shall cease. On application of the plaintiff the court shall enjoin the further prosecution of any action or proceeding against the plaintiff or the plaintiff's property with respect to any claim subject to limitation in the action.

(4) NOTICE TO CLAIMANTS. Upon the owner's compliance with subdivision (1) of this rule the court shall issue a notice to all persons asserting claims with respect to

which the complaint seeks limitation, admonishing them to file their respective claims with the clerk of the court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice. The date so fixed shall not be less than 30 days after issuance of the notice. For cause shown, the court may enlarge the time within which claims may be filed. The notice shall be published in such newspaper or newspapers as the court may direct once a week for four successive weeks prior to the date fixed for the filing of claims. The plaintiff not later than the day of second publication shall also mail a copy of the notice to every person known to have made any claim against the vessel or the plaintiff arising out of the voyage or trip on which the claims sought to be limited arose. In cases involving death a copy of such notice shall be mailed to the decedent at the decedent's last known address, and also to any person who shall be known to have made any claim on account of such death.

(5) CLAIMS AND ANSWER. Claims shall be filed and served on or before the date specified in the notice provided for in subdivision (4) of this rule. Each claim shall specify the facts upon which the claimant relies in support of the claim, the items thereof, and the dates on which the same accrued. If a claimant desires to contest either the right to exoneration from or the right to limitation of liability the claimant shall file and serve an answer to the complaint unless the claim has included an answer.

(6) INFORMATION TO BE GIVEN CLAIMANTS. Within 30 days after the date specified in the notice for filing claims, or within such time as the court thereafter may allow, the plaintiff shall mail to the attorney for each

claimant (or if the claimant has no attorney to the claimant) a list setting forth (a) the name of each claimant, (b) the name and address of the claimant's attorney (if the claimant is known to have one), (c) the nature of the claim, i.e, whether property loss, property damage, death, personal injury, etc., and (d) the amount thereof.

(7) INSUFFICIENCY OF FUND OR SECURITY. Any claimant may by motion demand that the funds deposited in court or the security given by the plaintiff be increased on the ground that they are less than the value of the plaintiff's interest in the vessel and pending freight. Thereupon the court shall cause due appraisement to be made of the value of the plaintiff's interest in the vessel and pending freight; and if the court finds that the deposit or security is either insufficient or excessive it shall order its increase or reduction. In like manner any claimant may demand that the deposit or security be increased on the ground that it is insufficient to carry out the provisions of the statutes relating to claims in respect of loss of life or bodily injury; and, after notice and hearing, the court may similarly order that the deposit or security be increased or reduced.

(8) OBJECTIONS TO CLAIMS: DISTRIBUTION OF FUND. Any interested party may question or controvert any claim without filing an objection thereto. Upon determination of liability the fund deposited or secured, or the proceeds of the vessel and pending freight, shall be divided pro rata, subject to all relevant provisions of law, among the several claimants in proportion to the amounts of their respective claims, duly proved, saving, however, to all parties any priority to which they may be legally entitled.

(9) VENUE: TRANSFER. The complaint shall be filed in any district in which the vessel has been attached or arrested to answer for any claim with respect to which the plaintiff seeks to limit liability; or, if the vessel has not been attached or arrested, then in any district in which the owner has been sued with respect to any such claim. When the vessel has not been attached or arrested to answer the matters aforesaid, and suit has not been commenced against the owner, the proceedings may be had in the district in which the vessel may be, but if the vessel is not within any district and no suit has been commenced in any district, then the complaint may be filed in any district. For the convenience of parties and witnesses, in the interest of justice, the court may transfer the action to any district; if venue is wrongly laid the court shall dismiss or, if it be in the interest of justice, transfer the action to any district in which it could have been brought. If the vessel shall have been sold, the proceeds shall represent the vessel for the purposes of these rules.